

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG**

DAVID W. LINDSAY,

Plaintiff,

v.

**CIVIL ACTION NO. 3:04CV108
(BROADWATER)**

**JO ANNE B. BARNHART,
Commissioner of the Social Security
Administration,**

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day the above styled case came before the Court for consideration of the Report and Recommendation of Magistrate Judge John S. Kaull, dated May 5, 2006 and the Plaintiff's objections thereto filed on May 19, 2006. In the interests of justice and in accordance with 28 U.S.C. § 636(b)(1), the Court has conducted a *de novo* review.

The Court, after reviewing the above, is of the opinion that the Magistrate Judge's Report and Recommendation should be and is hereby **ORDERED ADOPTED**.

Plaintiff argues that the Magistrate Judge's conclusion indicates that with proper medication the Plaintiff would not be disabled. Plaintiff then asserts that he should not be penalized because his caretakers have consistently failed to provide him with the needed medications.

The Court finds the record indicates that, despite the neglect of the Plaintiff's need for consistent medication, the reviewing experts concluded he did not meet the disability requirements. Furthermore, the Administrative Law Judge (ALJ) found that the Plaintiff's behavioral problems

were controllable with medication. In light of the decision in Gross v. Heckler, this finding is sufficient to support the ALJ's decision to deny disability. Gross v. Heckler 785 F. 2d 1163 (4th Cir. 1986).

Accordingly, the Court **ORDERS** that the Defendant's Motion for Summary Judgment (Document No. 21) be **GRANTED**. The Court further **ORDERS** that Plaintiff's Motion for Summary Judgment (Document No. 18) be **DENIED**. It is further **ORDERED** that this action be **DISMISSED WITH PREJUDICE** based on the reasons set forth in the Magistrate Judge's Report and Recommendation, and **STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit true copies of this Order to the Plaintiff and all counsel of record herein.

DATED this 20th day of June 2006.


W. CRAIG BROADWATER
UNITED STATES DISTRICT JUDGE